

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

ARTICLE 27 Lettuce

(Notice published December 28, 2007)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend Title 3, Article 27, Sections 1438.7 and 1438.17 of the California Code of Regulations (CCR).

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on February 11, 2008. The Department will consider only comments received at the Department office by that time. Submit comments to:

Rick S. Jensen, Chief
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407, 42681, and 42682 of the California Food and Agricultural Code (F&A Code), and to implement, interpret, or make specific Section 42941 of the F&A Code proposes to amend regulations in Title 3 of the CCR.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 407 of the F&A Code declares that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions that he is directed or authorized to administer or enforce.

The F&A Code Section 42681 gives the Secretary authority to make regulations as are reasonably necessary to secure uniformity and enforcement. Section 42682 states no new regulation concerning standard containers or pack may be adopted unless that

container and pack have gone through the experimental container and pack permit process.

Section 42941 declares it unlawful for any person to prepare, pack, place, or deliver any fruits, nuts, and vegetables unless their containers conform to all provisions outlined in the CCR.

Head lettuce currently has five containers defined as standard. Lettuce also has pack requirements of eighteen, twenty-four, or thirty heads per box. Section 1438.7 and 1438.17 outline standard container requirements and exemptions as well as pack regulations.

Innovative growers have produced smaller heads of lettuce marketed as baby lettuce, which cannot meet standard pack or standard container requirements. Industry has gone through the necessary experimental permit process and has exhausted its renewals.

Changing the pack requirement would affect all non-consumer boxes and may impact industry in a negative way by disrupting normal channels of trade. Adding several new containers may have the same effect. Industry would rather exempt baby lettuce from standard container and pack requirements by creating a maximum size requirement.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

Other nondiscretionary cost or saving imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

Adoption of these regulations will not:

1. Create or eliminate jobs within California;
2. Create new businesses or eliminate existing businesses within California; or
3. Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

EFFECT ON SMALL BUSINESS

The Department has initially determined the proposed changes to the regulations would result in no added costs to small businesses affected by these proposed changes. Due to size differences, baby head lettuce does not conform to current head lettuce standard container or pack requirements. The proposed changes allow baby head lettuce to be packed and shipped, thus expanding industry's ability to market their product.

CONSIDERATION OF ALTERNATIVES

The Department has initially determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Rick S. Jensen, Chief
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427

The backup contact person for these inquiries is:

Susan Shelton, Staff Services Analyst
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427

Please direct requests for copies of the proposed text of the regulations, the initial statement of reason, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Shelton at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at 560 J Street, Suite 220, Sacramento, CA 95814. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the petition received from Western Growers Association. Copies may be obtained by contacting Ms. Shelton at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for a minimum of 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Shelton at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shelton at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at: www.cdfa.ca.gov/Regulations.html

DEPARTMENT OF FOOD AND AGRICULTURE

Date

George Deese, Deputy Secretary